

AMENDED IN SENATE APRIL 2, 2014

SENATE BILL

No. 1251

Introduced by Senator Huff

February 20, 2014

An act to amend Section ~~7522.04~~ 7522.02 of the Government Code, relating to public employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

SB 1251, as amended, Huff. California Public Employees' Pension Reform Act of ~~2013~~. 2013: joint power authority: employees.

The California Public Employees' Pension Reform Act of 2013 (PEPRA) requires a public retirement system, as defined, to modify its plan or plans to comply with the act and, among other provisions, establishes new retirement formulas that may not be exceeded by a public employer offering a defined benefit pension plan for employees first hired on or after January 1, 2013. PEPRA authorizes individuals who were employed by any public employer before January 1, 2013, and who became employed by a subsequent public employer for the first time on or after January 1, 2013, to be subject to the retirement plan that would have been available to employees of the subsequent employer who were first employed by the subsequent employer on or before December 31, 2012, if the individual was subject to reciprocity, as specified.

Existing law, the Joint Exercise of Powers Act, generally authorizes 2 or more public agencies, by agreement, to jointly exercise any common power, which may include hiring employees and establishing retirement systems.

This bill would authorize a joint powers authority formed by one or more public employers, on or after January 1, 2013, to provide

employees meeting specified criteria with the defined benefit plan or formula that was available to employees of the employer on December 31, 2012. This bill would prohibit the formation of a joint powers authority on or after January 1, 2013, in a manner that would exempt a new employee or a new member from the requirements of PEPRA.

~~The California Public Employees' Pension Reform Act of 2013 (PEPRA) generally requires a public retirement system, as defined, to modify its pension plan or plans to comply with the act, as specified. Among other things, PEPRA prohibits a public employer offering a defined benefit pension plan from exceeding specified retirement formulas for new members and prohibits an enhancement of a public employee's retirement formula or benefit adopted after January 1, 2013, from applying to service performed prior to the operative date of the enhancement. PEPRA prescribes definitions for the purposes of its provisions.~~

~~This bill would make nonsubstantive changes to the definitional provisions of PEPRA.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7522.02 of the Government Code is
2 amended to read:
3 7522.02. (a) (1) Notwithstanding any other law, except as
4 provided in this article, on and after January 1, 2013, this article
5 shall apply to all state and local public retirement systems and to
6 their participating employers, including the Public Employees'
7 Retirement System, the State Teachers' Retirement System, the
8 Legislators' Retirement System, the Judges' Retirement System,
9 the Judges' Retirement System II, county and district retirement
10 systems created pursuant to the County Employees Retirement
11 Law of 1937, independent public retirement systems, and to
12 individual retirement plans offered by public employers. However,
13 this article shall be subject to the Internal Revenue Code and
14 Section 17 of Article XVI of the California Constitution. The
15 administration of the requirements of this article shall comply with
16 applicable provisions of the Internal Revenue Code and the
17 Revenue and Taxation Code.

(2) Notwithstanding paragraph (1), this article shall not apply to the entities described in Section 9 of Article IX of, and Sections 4 and 5 of Article XI of, the California Constitution, except to the extent that these entities continue to be participating employers in any retirement system governed by state statute. Accordingly, any retirement plan approved before January 1, 2013, by the voters of any entity excluded from coverage by this section shall not be affected by this article.

(3) (A) Notwithstanding paragraph (1), this article shall not apply to a public employee whose interests are protected under Section 5333(b) of Title 49 of the United States Code until a federal district court rules that the United States Secretary of Labor, or his or her designee, erred in determining that the application of this article precludes certification under that section, or until January 1, 2015, whichever is sooner.

(B) If a federal district court upholds the determination of the United States Secretary of Labor, or his or her designee, that application of this article precludes him or her from providing a certification under Section 5333(b) of Title 49 of the United States Code, this article shall not apply to a public employee specified in subparagraph (A).

(4) Notwithstanding paragraph (1), this article shall not apply to a multiemployer plan authorized by Section 302(c)(5) of the Taft-Hartley Act (29 U.S.C. Sec. 186(c)(5)) if the public employer began participation in that plan prior to January 1, 2013, and the plan is regulated by the Employee Retirement Income Security Act of 1974.

(b) The benefit plan required by this article shall apply to public employees who are new members as defined in Section 7522.04.

(c) (1) Individuals who were employed by any public employer before January 1, 2013, and who became employed by a subsequent public employer for the first time on or after January 1, 2013, shall be subject to the retirement plan that would have been available to employees of the subsequent employer who were first employed by the subsequent employer on or before December 31, 2012, if the individual was subject to concurrent membership for which creditable service was performed in the previous six months or reciprocity established under any of the following provisions:

(A) Article 5 (commencing with Section 20350) of Chapter 3 of Part 3 of Division 5 of Title 2.

1 (B) Chapter 3 (commencing with Section 31450) of Part 3 of
2 Division 4 of Title 3.

3 (C) Any agreement between public retirement systems to provide
4 reciprocity to members of the systems.

5 (D) Section 22115.2 of the Education Code.

6 (2) An individual who was employed before January 1, 2013,
7 and who, without a separation from employment, changed
8 employment positions and became subject to a different defined
9 benefit plan in a different public retirement system offered by his
10 or her employer shall be subject to that defined benefit plan as it
11 would have been available to employees who were first employed
12 on or before December 31, 2012.

13 (d) If a public employer, before January 1, 2013, offers a defined
14 benefit pension plan that provides a defined benefit formula with
15 a lower benefit factor at normal retirement age and results in a
16 lower normal cost than the defined benefit formula required by
17 this article, that employer may continue to offer that defined benefit
18 formula instead of the defined benefit formula required by this
19 article, and shall not be subject to the requirements of Section
20 7522.10 for pensionable compensation subject to that formula.
21 However, if the employer adopts a new defined benefit formula
22 on or after January 1, 2013, that formula must conform to the
23 requirements of this article or must be determined and certified by
24 the retirement system's chief actuary and the retirement board to
25 have no greater risk and no greater cost to the employer than the
26 defined benefit formula required by this article and must be
27 approved by the Legislature. New members of the defined benefit
28 plan may only participate in the lower cost defined benefit formula
29 that was in place before January 1, 2013, or a defined benefit
30 formula that conforms to the requirements of this article or is
31 approved by the Legislature as provided in this subdivision.

32 (e) If a public employer, before January 1, 2013, offers a
33 retirement benefit plan that consists solely of a defined contribution
34 plan, that employer may continue to offer that plan instead of the
35 defined benefit pension plan required by this article. However, if
36 the employer adopts a new defined benefit pension plan or defined
37 benefit formula on or after January 1, 2013, that plan or formula
38 must conform to the requirements of this article or must be
39 determined and certified by the retirement system's chief actuary
40 and the system's board to have no greater risk and no greater cost

1 to the employer than the defined benefit formula required by this
2 article and must be approved by the Legislature. New members of
3 the employer's plan may only participate in the defined
4 contribution plan that was in place before January 1, 2013, or a
5 defined contribution plan or defined benefit formula that conforms
6 to the requirements of this article. This subdivision shall not be
7 construed to prohibit an employer from offering a defined
8 contribution plan on or after January 1, 2013, either with or without
9 a defined benefit plan, whether or not the employer offered a
10 defined contribution plan prior to that date.

11 *(f) (1) If one or more public employers, on or after January 1,*
12 *2013, form a joint powers authority pursuant to the provisions of*
13 *the Joint Exercise of Powers Act (Article 1 (commencing with*
14 *Section 6500) of Chapter 5), that joint powers authority may*
15 *provide the following employees with the defined benefit plan or*
16 *formula that would have been available to employees of the*
17 *employer on December 31, 2012:*

18 *(A) An employee of that public employer or employers that was*
19 *hired prior to January 1, 2013, and was not subject to the*
20 *provisions of this article, and was subsequently employed by the*
21 *joint powers authority without a break in service of more than 180*
22 *days.*

23 *(B) An employee of that public employer or employers that was*
24 *hired on or after January 1, 2013, but would otherwise be exempt*
25 *from this article pursuant to subdivision (c), and was subsequently*
26 *employed by the joint powers authority without a break in service*
27 *of more than 180 days.*

28 *(2) If there was more than one retirement plan or formula in*
29 *place on December 31, 2012, due to there being more than one*
30 *employer, then the joint powers authority shall indicate which*
31 *defined benefit plan or formula shall apply to employees of the*
32 *authority who are exempt from this article pursuant to this*
33 *subdivision.*

34 *(3) The formation of a joint powers authority on or after January*
35 *1, 2013, shall not act in a manner as to exempt a new employee*
36 *or a new member, as defined by Section 7522.04, from the*
37 *requirements of this article. New members may only participate*
38 *in a defined benefit plan or formula that conforms to the*
39 *requirements of this article.*

(4) *This subdivision shall not be construed to prohibit an employer or employers from forming a joint powers authority on or after January 1, 2013, and providing to all employees the defined benefit plan and formula that conforms to the requirements of this article.*

~~(f)~~

(g) The Judges' Retirement System and the Judges' Retirement System II shall not be required to adopt the defined benefit formula required by Section 7522.20 or 7522.25 or the compensation limitations defined in Section 7522.10.

~~(g)~~

(h) This article shall not be construed to provide membership in any public retirement system for an individual who would not otherwise be eligible for membership under that system's applicable rules or laws.

~~(h)~~

(i) On and after January 1, 2013, each public retirement system shall modify its plan or plans to comply with the requirements of this article and may adopt regulations or resolutions for this purpose.

~~SECTION 1. Section 7522.04 of the Government Code is amended to read:~~

~~7522.04. For the purposes of this article:~~

~~(a) "Defined benefit formula" means a formula used by a retirement system to determine a retirement benefit based on age, years of service, and pensionable compensation earned by an employee up to the limit defined in Section 7522.10.~~

~~(b) "Employee contributions" means the contributions to a public retirement system required to be paid by a member of the system, as fixed by law, regulation, administrative action, contract, contract amendment, or other written agreement recognized by the retirement system as establishing an employee contribution.~~

~~(c) "Federal system" means the old age, survivors, disability, and health insurance provisions of the federal Social Security Act (42 U.S.C. Sec. 301 et seq.).~~

~~(d) "Member" means a public employee who is a member of a public retirement system or plan.~~

~~(e) "New employee" means either of the following:~~

~~(1) An employee, including one who is elected or appointed, of a public employer who is employed for the first time by a public~~

1 employer on or after January 1, 2013, and who was not employed
2 by another public employer prior to that date.

3 (2) ~~An employee, including one who is elected or appointed, of~~
4 ~~a public employer who is employed for the first time by a public~~
5 ~~employer on or after January 1, 2013, and who was employed by~~
6 ~~another public employer prior to that date, but who was not subject~~
7 ~~to reciprocity under subdivision (c) of Section 7522.02.~~

8 (f) ~~“New member” means any of the following:~~

9 (1) ~~An individual who becomes a member of a public retirement~~
10 ~~system for the first time on or after January 1, 2013, and who was~~
11 ~~not a member of another public retirement system prior to that~~
12 ~~date.~~

13 (2) ~~An individual who becomes a member of a public retirement~~
14 ~~system for the first time on or after January 1, 2013, and who was~~
15 ~~a member of another public retirement system prior to that date,~~
16 ~~but who was not subject to reciprocity under subdivision (c) of~~
17 ~~Section 7522.02.~~

18 (3) ~~An individual who was an active member in a retirement~~
19 ~~system and who, after a break in service of more than six months,~~
20 ~~returned to active membership in that system with a new employer.~~
21 ~~For purposes of this subdivision, a change in employment between~~
22 ~~state entities or from one school employer to another shall not be~~
23 ~~considered as service with a new employer.~~

24 (g) ~~“Normal cost” means the portion of the present value of~~
25 ~~projected benefits under the defined benefit that is attributable to~~
26 ~~the current year of service, as determined by the public retirement~~
27 ~~system’s actuary according to the most recently completed~~
28 ~~valuation. For the purpose of determining normal cost, the system’s~~
29 ~~actuary may use a single rate of contribution or an age-based rate~~
30 ~~of contribution as is applicable to that retirement system.~~

31 (h) ~~“Public employee” means an officer, including one who is~~
32 ~~elected or appointed, or an employee of a public employer.~~

33 (i) ~~“Public employer” means:~~

34 (1) ~~The state and every state entity, including, but not limited~~
35 ~~to, the Legislature, the judicial branch, including judicial officers,~~
36 ~~and the California State University.~~

37 (2) ~~A political subdivision of the state, or agency or~~
38 ~~instrumentality of the state or subdivision of the state, including,~~
39 ~~but not limited to, a city, county, city and county, a charter city, a~~
40 ~~charter county, school district, community college district, joint~~

1 ~~powers authority, joint powers agency, and any public agency,~~
2 ~~authority, board, commission, or district.~~

3 ~~(3) Any charter school that elects or is required to participate~~
4 ~~in a public retirement system.~~

5 ~~(j) “Public retirement system” means a pension or retirement~~
6 ~~system of a public employer, including, but not limited to, an~~
7 ~~independent retirement plan offered by a public employer that the~~
8 ~~public employer participates in or offers to its employees for the~~
9 ~~purpose of providing retirement benefits or a system of benefits~~
10 ~~for public employees that is governed by Section 401(a) of Title~~
11 ~~26 of the United States Code.~~